

CRIMINAL APPEALS: INFORMATION HANDOUT

The following information has been prepared by the APPELLATE COURT COMMITTEE of the SAN DIEGO COUNTY BAR ASSOCIATION to assist trial counsel in avoiding common mistakes in processing an appeal. **THIS IS NOT AN OFFICIAL COURT DOCUMENT AND IS NOT INTENDED TO BE RELIED UPON AS A SUBSTITUTE FOR THE RELEVANT STATUTES AND CALIFORNIA RULES OF COURT.** The purpose of this document is to serve as a reference to important statutes and rules that pertain to getting the appeal started. It contains information about how the appeal is processed up to the point the record is filed in the Court of Appeal. It is not designed as an exhaustive treatment of the subjects touched upon. Further information on procedures related to filing an appeal can be obtained from the Appellate Defenders, Inc. Web site (<http://www.adi-sandiego.com>) or by telephone ((619) 696-0282). Appellate Defenders, Inc. administers the appointed counsel program for the Fourth Appellate District. The Lawyer Referral and Information Service of the San Diego County Bar Association ((619) 231-8585) maintains a panel of experienced appellate attorneys.

I. What are the obligations of trial attorneys regarding the defendant's appeal?

In general, the trial attorney is required to counsel the defendant on whether an appeal should be taken, and later file the notice of appeal - including any documents necessary to have appellate counsel appointed - if the attorney believes an appeal would be in the defendant's best interest or if the defendant wants to appeal. The execution of the notice of appeal does not constitute an undertaking to represent the defendant on the appeal unless the notice of appeal expressly says so. The obligations of trial counsel regarding an appeal are set forth in Penal Code section 1240.1. (Pen. Code, § 1240.1, subds. (a) & (b); see also *Roe v. Flores-Ortega* (2000) 528 U.S. 470.)

II. What if I am representing myself in the trial court?

If a defendant is representing himself or herself in the trial court, the defendant is responsible for starting his or her own appeal. Although such "pro per" defendants should receive advice from the sentencing judge as to when to file the notice of appeal, such advice is not required after a guilty plea. (Cal. Rules of Court, rules 4.305, 4.470.) It is the defendant's responsibility to make sure that the notice of appeal is timely filed and that a motion to appoint counsel on appeal is filed. There is no right to self-representation in criminal matters. (*Martinez v. Court of Appeal of Cal., Fourth Appellate Dist.* (2000) 528 U.S. 152, 163-164; *In re Barnett* (2003) 31 Cal.4th 466, 472-473.) A defendant may not file a pro per appellate brief unless invited to do so by the court.

III. When must the notice of appeal be filed?

- A. In criminal cases, the notice of appeal must be filed within 60 days following the sentencing. (See rule 30.1(a); Pen. Code, § 1238.5 [reinstatement of defendant's right to appeal by the prosecution].) The notice should be filed in the superior court, not the Court of Appeal. (Rule 30 (a)(1).) In San Diego County, the notice of appeal should be filed in the appeals section of the superior court where the case was heard.
- B. If the notice is received late, then a letter will be sent to the filer indicating that the notice was received but not filed. (Rule 30.1(c).)

- C. In certain instances, the Court of Appeal may grant a defendant relief from default for the late filing of a notice of appeal. (*In re Benoit* (1973) 10 Cal.3d 72; Fisher et al., Appeals and Writs in Criminal Cases (Cont.Ed.Bar 2d ed. 2003) § 1B.7, p. 49) [constructive filing of the notice]; *Roe v. Flores-Ortega*, supra, 528 U.S. 470 [ineffective assistance of counsel for failure to consult with the client about appealing]; *In re Jordan* (1992) 4 Cal.4th 116, 130; rule 30.1(d) [timely delivery of the notice to prison authorities].) Please call Appellate Defenders, Inc., at (619) 696-0282, for late-filing problems.
- D. Notice of appeals in juvenile cases are governed by rules 37(c), (d), & (e).

IV. What is the required format of the notice of appeal?

- A. Although no particular format is required, the preferred form for criminal appeals is attached to this handout. At a minimum, a notice of appeal should contain the defendant's name, case number(s), the date of the sentence or other judgment or order being appealed, and the court where the proceedings took place. The defendant or the attorney must sign the notice of appeal. (Rule 30(a)(3) and (4).)
- B. The notice of appeal should specify whether the appeal is following a trial or a guilty plea. If the appeal is after a guilty plea, the notice must comply with rule 30(b) and state one or more of the following grounds for appeal:
 - 1. Sentencing error or other matters occurring after entry of the plea, which do not challenge its validity.
 - 2. The denial of a Penal Code section 1538.5 motion.
 - 3. A challenge to the validity of the plea. A certificate of probable cause is required if the appeal is challenging the validity of the plea (e.g., a motion to withdraw the plea has been denied) or if the remedy sought will require the plea be vacated (e.g., *People v. Panizzon* (1986) 13 Cal.4th 68). An application for a certificate of probable cause, with a statement of reasons for the challenge to the plea, signed under penalty of perjury, must be filed in addition to the notice of appeal. The statement of reasons must indicate reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings. The trial judge will then decide whether a certificate of probable cause should issue. (Rule 30(b)(1) & (5); Pen. Code, § 1237.5.)

V. What is included in the normal record on appeal, and how do I request additional material?

- A. Unlike civil appeals, in criminal and juvenile delinquency appeals, there is a normal record, which is prepared in every case without any specific request. The contents of these "normal records" are set out in the rules. (Rule 31.) In general, the normal record in a criminal case contains all of the papers and proceedings except jury voir dire and opening statements of counsel.
- B. After the record is filed in the Court of Appeal, a party can request that the Court of Appeal augment the record to include relevant material. (Rule 12(a).)
- C. If a part of the normal record is missing after the record is filed, a request to complete the record can be made. The request is filed with superior court clerk. (Rule 32.1(b).)

- D. Exhibits are part of the normal record, but are not included in the transcripts prepared and filed under rule 31. Exhibits will be transmitted to the Court of Appeal if the court or a party requests them under rule 18(a) and (b). (Rule 31(e).)

VI. Where can I get more information about superior court and Court of Appeal procedure?

- A. The Court of Appeal maintains a comprehensive Internet Web site containing case information (except on confidential cases), oral argument calendars, opinions (published and unpublished), local rules, frequently asked questions, practices and procedures, biographies of the court's justices and extern program information. The Web site can be accessed at <http://www.courtinfo.ca.gov/courts/courtsofappeal/4thDistrictDiv1>. A copy of a handout entitled "Basic Appellate Procedures", which answers frequently asked questions about procedure after the record is filed, is available at the clerk's office for the Court of Appeal.

B. Pertinent Addresses and Telephone Numbers:

1. Clerk, Appeals Section
San Diego County Superior Court
Central Division
P.O. Box 120128
220 West Broadway, Room 3005
San Diego, CA 92112-0128
(619) 531-3144
2. Clerk, Appeals Section
San Diego County Superior Court
North County Division
325 South Melrose Drive, Suite 1000
Vista, CA 92083-6643
(760) 806-6170
3. Clerk, Appeals Section
San Diego Juvenile Court
2851 Meadow Lark Drive
San Diego, CA 92123
(619) 694-4538
4. Clerk, Appeals Section
North County Juvenile Court
325 South Melrose Drive, Suite 1000
Vista, CA 92083-6643
(760) 940-6650
5. Clerk, Appeals Section
El Cajon Juvenile Court
250 East Main Street, 6th Floor
El Cajon, CA 92020
(619) 441-4250
6. Clerk, Appeals Section
South Bay Juvenile Court

500 Third Avenue, 3rd Floor
Chula Vista, CA 91910
(619) 691-4678

7. Clerk of the Court
Court of Appeal
Fourth Appellate District, Division One
750 "B" Street, Suite 300
San Diego, CA 92101-8196
(619) 645-2761
8. Appellate Defenders, Inc.
555 West Beech Street, Suite 300
San Diego, CA 92101
(619) 696-0282

INSTRUCTIONS ON BACK. This Notice of Appeal must be filed within 60 days after judgment or sentence in the county superior court where the judgment or sentence was imposed.

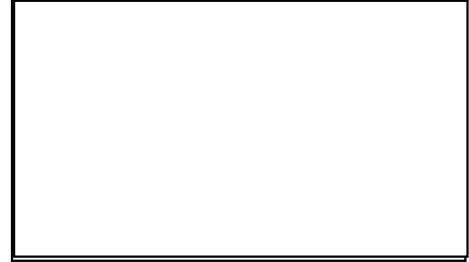
(1) Name: _____

CDC or Booking No. _____ -or-

State Bar No. _____

Address: _____

Telephone (if applicable): _____



The filing of a notice of appeal by counsel does not in itself constitute an undertaking by that attorney to handle that appeal. (P.C. 1240.1, subd. (b).)

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, (2) _____ COUNTY

THE PEOPLE OF THE STATE OF CALIFORNIA,) (3) Superior Court No. _____

Plaintiff and Respondent,)

VS.)

(4))

(Print full name and date of birth.))

Defendant and Appellant.)

NOTICE OF APPEAL

From the judgment of this court entered

(5) _____
(Date of sentencing.)

(6) **TYPE OF PROCEEDING:** One of these boxes must be checked.

Jury or Court Trial

A Contested Probation Violation (Vickers hearing),

A Plea of Guilty or Nolo Contendere, or an Admitted Probation Violation.

(7) *If you pleaded guilty, or you admitted you were in violation of probation, you must also check one or more of the following boxes:*

1. This appeal is based on the sentence or other matters occurring after the plea.
2. This appeal is based on the denial of a motion to suppress evidence under Penal Code section 1538.5.
3. This appeal challenges the validity of the plea or admission. (*See the attached "Request for Certificate of Probable Cause" form. A written request, signed under penalty of perjury, must be filed along with the notice of appeal. It should show why you think the plea was not obtained legally.*)

(8) MOTION FOR APPOINTMENT OF COUNSEL

Defendant requests the Court of Appeal appoint an attorney for appeal. Defendant does not have sufficient means to hire an attorney.

Defendant's spouse (if applicable) and defendant have the following combined income and property:

Take-home pay from job (monthly): \$ _____

Other income (monthly): \$ _____

Money in bank at this time: \$ _____

Home ownership? (Check one.) Yes No

Trial attorney was: (Check one.)

A public defender or court appointed attorney.

An attorney paid for by defendant.

Other: _____

I declare under penalty of perjury under the laws of the State of California that this information is true and correct:

Date

Signature of Defendant or Trial Counsel

Date: _____
(Signature of Defendant or Trial Counsel)

INSTRUCTIONS FOR FILLING OUT A NOTICE OF APPEAL

Please follow these instructions carefully. If you have any questions, ask your trial attorney for help.

The notice of appeal form is designed to be easily completed by filling in the blanks with your case information. Wherever you see a line like this, _____, fill the blank in with the appropriate information. Please note: **A notice of appeal must be filed within 60 days of the date of judgment or sentencing with the county superior court where the sentence or judgment was imposed.** If you have not yet been sentenced, wait until the sentencing hearing takes place before submitting the appeal for filing to ensure you have the correct sentencing date and other information.

The numbers below correspond with the numbers on the notice of appeal form:

1. **Name and address:** If you are in county jail but will be transferred to state prison, put your county jail address on the notice of appeal form. You will be located in state prison later.
2. **County name:** The county where your case took place and you were sentenced.
3. **Superior Court number:** It is important to have the correct case number(s) on the notice of appeal form. Ask your attorney if you do not know your superior court number(s). If you were sentenced on more than one case at the same time, include all of the case numbers you want to appeal.
4. **Your name:** Print your full name.
5. **Date of sentencing:** The date you were sentenced. If you are not absolutely sure, check with your attorney or write, "On or about ____" and the closest date that you can recall.
6. **Type of proceeding:** *One of these boxes must be checked.*
 - ⊗ **JURY OR COURT TRIAL:** Check this box if you had a jury trial or a court trial (a trial before a judge).
 - ⊗ **A CONTESTED PROBATION REVOCATION:** Check this box if your probation was revoked at a hearing and you did not admit violating your probation. This box applies even if you were placed on probation previously after a jury trial or a guilty plea, and the court has recently revoked your probation.
 - ⊗ **A PLEA OF GUILTY OR NOLO CONTENDERE, OR ADMITTED PROBATION VIOLATION:**
If you check this box, **complete section number 7.**
7. **Grounds for appeal:** If you pleaded guilty or admitted your probation violation, you **must** check at least one box in section (7). Otherwise, the court can dismiss the appeal for not complying with California Rules of Court, rule 31(d).
 - ⊗ **Box #1 Sentence**
Applies if you do not agree with your sentence (including the term, credits, restitution, fines, probation conditions, etc.) or any other order the judge made after you entered into the plea agreement or admitted a probation violation.
 - ⊗ **Box #2 Denial of a motion to suppress evidence**
This box can only be checked if, in fact, a motion to suppress evidence because of an illegal search and seizure was denied by the judge.
 - ⊗ **Box #3 Challenge to the plea**
Requires a "Request for Certificate of Probable Cause." Check this box if you believe there is a valid basis for trying to withdraw your plea or you admitted being in violation of probation.
8. **Motion for Appointment of Counsel:** You are entitled to court-appointed counsel on appeal if you do not have the funds to retain an attorney.

REMEMBER:

Mail the Notice of Appeal to the **superior court of the county where your case took place. If possible, obtain and keep for your records some proof of mailing.*

Notices of Appeal must be filed with the superior court **no later than 60 days from the date of judgment or sentencing.*

**Be sure to complete all sections of the notice of appeal and background form.*

REQUEST FOR CERTIFICATE OF PROBABLE CAUSE

(This request must be completed, signed, and filed with the notice of appeal only if you pleaded guilty AND box number 3 under section (7) is checked.)

I request a certificate of probable cause. The plea of guilty or nolo contendere, or the admission of a probation violation, was illegal because:

I declare under penalty of perjury under the laws of the State of California that this statement is true.

Signature: _____ Date _____
Defendant or Trial Counsel

POINTS AND AUTHORITIES

A certificate of probable cause is a document issued by the trial court which certifies that at least one contention challenging the plea is not totally frivolous. (Pen. Code. § 1237.5; *People v. Ribero* (1971) 4 Cal.3d 55.) A common example of a contention which challenges the plea is that the trial court improperly denied the defendant=s motion to withdraw the plea. The trial judge should issue the certificate wherever there is an honest difference of opinion about the issue. (*People v. Ribero, supra*, at p. 63, fn. 4.) Signing the certificate does not mean the trial court believes the contention is “probably” meritorious. (*Ibid.*)

The request for certificate of probable cause is (check one) _____ granted
_____ denied.

Honorable _____, Judge

Date

BACKGROUND INFORMATION

THE INFORMATION ON THIS FORM WILL BE A PART OF THE PUBLIC
RECORD
AND IS NOT CONFIDENTIAL.

Name: _____ Date of Birth: _____

List any A.K.A. 's needed to contact appellant:

Jail Booking No. or State Prison Inmate (CDC) No.

Current Address:

Family member or friend who will always know defendant 's address:

Name: _____ Phone: _____

Address: _____

Trial Attorney:

Name: _____ Phone: _____

Address: _____

Proceeding:

Jury Trial

Court Trial

Guilty Plea

Other
(explain):

Crime(s) convicted of:

Sentence:

Names of co-defendants and their counsel (whether joint or separate proceedings):

Are there now, or have there ever been, any related appeals, writs or other proceedings before this or any other California Appellate Court? ____Yes ____No.

If yes: Appellate case number: _____ Title: _____

Possible Issues on Appeal (These are only suggestions. The attorney on appeal will make the final decision on which issues to raise.):

ARRANGEMENTS FOR COUNSEL ON APPEAL

Have you hired an attorney? Yes No. If you have hired an appellate attorney, please provide:

Name: _____ Phone: _____

If you cannot afford to hire an attorney, you have the right to have one appointed and paid for by the court. Fill out and sign the "Motion for Appointment of Counsel" on the bottom of the Notice of Appeal (page 1).